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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CHRISTIAN MARTINEZ and CARLOS MARTINEZ, Defendants and Appellants.	B204770 (Los Angeles County Super. Ct. No. GA059086)

APPEALS from a judgment of the Superior Court of Los Angeles County, David Wesley, Judge. Affirmed.

Ronald White for Defendant and Appellant Christian Martinez.

Chris R. Redburn, under appointment by the Court of Appeal, for Defendant and Appellant Carlos Martinez.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews, Susan S. Kim, Susan Sullivan and Zee Rodriguez, Deputy Attorneys Generals, for Plaintiff and Respondent.

Christian Martinez and Carlos Martinez, who are not related, appeal from the judgments entered after their convictions for felony murder arising from a robbery. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Evidence at Trial*

On the afternoon of October 10, 2004 Christian Martinez, accompanied by another young woman, rented a room at a Motel 6 in Arcadia. While checking in, Christian provided her name, address and vehicle information (a white, 1991 Cadillac DeVille) to the motel manager. She was assigned room 117. An hour later, accompanied this time by a young man, Christian returned to the motel office and requested a refund. Explaining he would need to see the condition of the room before he could authorize a refund, the manager went to inspect room 117. As he entered the room, two men wearing "beanies," one holding a can of beer, were coming out of the room. Inside, the manager found the bathroom had been used by someone taking a shower. He returned to the office and told Christian he could not give her a refund. Although she appeared to be upset, she left the office. She was then seen getting into her car with a woman and a man and driving slowly out of the driveway.

An hour earlier, when the white Cadillac had first entered the motel parking lot, a man later identified as Peter Santisteven was seen walking from the car to a group of men drinking beer in the parking lot. Complaining he lacked money to check into the motel, Santisteven attempted to sell the men a cell phone. Nacho Barboza, a construction worker who was staying at the motel along with other members of his construction crew, declined to buy the cell phone but removed a $5 bill from a roll of cash in his pocket and gave it to Santisteven. The men also gave Santisteven a beer and talked with him for a few minutes. The group was interrupted by two police officers, who had received a complaint about the men drinking in the motel parking lot. During a conversation with the officers, Santisteven removed his knit cap and showed the officers his partially shaved head, explaining his girlfriend had not been able to finish cutting his hair. The officers left, and the men moved inside room 130. When Santisteven tried to follow the

men into the room, one of the workers, Jose Ramirez, stopped him and asked him to leave.

Some time later, Ramirez, who was standing outside his room on the second floor, saw two men, one wearing a knit cap and the other in a hooded yellow sweatshirt, walking below him along the motel corridor. Ramirez also saw a woman he later identified as Christian Martinez get into her car with two other people and drive slowly out of the parking lot.

Meanwhile, the man with the knit cap and the man wearing the hooded sweatshirt entered room 130, which was registered to Alberto Castillo, the foreman of the construction crew. Castillo was lying on the bed watching television with Barboza, who stood by the bathroom door. Barboza recognized the man in the knit cap as Santisteven, the man with the bad haircut to whom he had given money in the parking lot. Santisteven approached Barboza and demanded the rest of his money. When Barboza denied having more money, Santisteven told him he knew he had more money and grabbed him in a headlock. At the same time, the man in the hooded sweatshirt pulled a gun from his waistband and pointed it at Barboza's neck. Castillo, who had been lying on the bed, told Santisteven to leave his friend alone. As Santisteven took Barboza's money from his pocket, the man with the gun turned toward Castillo and straddled him on the bed with his knee on Castillo's chest. Barboza continued to struggle with Santisteven and heard, but did not see, a shot. The two men fled the room. Barboza saw Castillo lying on the bed covered in blood. Castillo pushed himself off of the bed and staggered from the room. He then fell to the ground and died just outside the room.

A maid who was cleaning room 131 heard the shot and stepped into the corridor. She saw a young man walk out of room 130 and head toward the white Cadillac. He was followed by Castillo, who was bleeding and fell to the ground next to her housecleaning cart. Ramirez, still standing on the walkway outside his room, heard the shot and then heard screeching tires and saw the white Cadillac race through the parking lot at a high speed. The same woman, Christian Martinez, was driving the car; and Ramirez saw in the back seat the two men he had previously seen walking in the corridor beneath him.

Another construction worker standing next to Ramirez also identified Christian Martinez as the driver of the car.[1]

A police officer directing traffic at a corner near the motel noticed the white Cadillac when it stopped at a traffic light. The officer saw three or four Hispanic males and at least one Hispanic female in the car. Because the occupants seemed nervous, he memorized the car's license plate number. Shortly after he saw the car, the officer heard a radio report describing the shooting, which indicated the perpetrators had fled in a white Cadillac. The officer called the dispatcher and provided the license number. Two days later the car was impounded by the sheriff's department, shortly before Christian Martinez reported it had been stolen. When Christian Martinez was arrested several days later, she was driving a black Nissan sedan. A search of the Nissan conducted pursuant to a warrant revealed a title certificate and registration for the white, 1991 Cadillac DeVille in the name of Christian Martinez.

Carlos Martinez was arrested a month after the murder after investigators determined he was the man in the yellow hooded sweatshirt.[2] Prior to being questioned by Arcadia Police Detectives Brett Bourgeous and Bill Walton, Carlos Martinez was advised of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694] (*Miranda*).) Carlos Martinez affirmed his willingness to answer questions; and, in a videotaped interview played for the jury, he recounted the events of the day of the shooting.[3] According to Carlos Martinez, he had been picked up earlier in the day by

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[1] To establish Christian Martinez's intent to aid and abet the robbery, the court allowed the People to introduce evidence that six months before the Motel 6 robbery and shooting, Christian Martinez had told a police detective she was the getaway driver for a companion's robbery of a pedestrian.

[2] At the time he was arrested, Carlos Martinez had in his possession a usable quantity of methamphetamine. He was subsequently charged with possession of a controlled substance.

[3] The redacted videotape and a redacted transcript of the interview were admitted into evidence solely against Carlos Martinez. The jury was instructed to disregard the

several friends who, after hanging around together, decided to rent a motel room. They ended up at the Motel 6. Carlos Martinez admitted going to room 130 with Santisteven but gave shifting accounts of what had happened thereafter. Carlos Martinez at first said, after his group of friends had decided to check out of room 117, Santisteven invited him to go have a beer with the construction workers Santisteven had met earlier in the parking lot. Carlos Martinez went along and was surprised when Santisteven began arguing with the workers in Spanish, which Carlos Martinez did not understand.[4] He intervened to protect Santisteven; and someone, not Carlos Martinez himself, shot Castillo. When Santisteven left the room, Carlos Martinez ran down and got into the waiting car.

When told by Detectives Bourgeous and Walton he had been seen with a gun in his hand, Carlos Martinez initially denied having a gun, but then claimed he had picked it up off the floor to avoid someone else shooting him. He again denied killing Castillo. Carlos Martinez then stated, "I think I need a lawyer sir." One of the investigators then replied, "Okay, that's it. Stand up. Let's go. We can't [talk] to you anymore, you just lawyered up."[5] The investigators continued, taking turns in prodding Carlos Martinez, "You want a lawyer?" "Unless you want to change your mind." Mumbling, Carlos Martinez responded, "Can I [stay by] myself now for a minute before I get a lawyer. Like a lawyer I can get later on." Detective Bourgeous answered, "If that's what you want you can do it. Once you say you want a lawyer we're not gonna ask any more questions, we're gonna take you right back down to your cell." Detective Walton then offered, "Unless you say 'I changed my mind. I don't want a lawyer.' That's up to you." Carlos Martinez replied, "I changed my mind, sir." Detective Walton questioned, "Okay, you don't want an attorney now, right?" Martinez answered, "At this point

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videotape and transcript in considering whether Christian Martinez was guilty of the crimes charged.

[4] The parties stipulated Carlos Martinez did not speak or understand Spanish.

[5] The transcript of the interview attributes statements to Carlos Martinez, Detective Bourgeous and an "unidentified voice." As Carlos Martinez's counsel suggested, the "unidentified voice" appears to be Detective Walton's, who was present during the interview.

[unintelligible]." One of the detectives answered, "At this point, okay, just so we understand."

Carlos Martinez immediately began talking again about the shooting. The interrogation continued for another hour during which Carlos Martinez implied he had fired a shot after being attacked by Barboza and Castillo because he feared for his life. Carlos Martinez also admitted disposing of the gun and his bloody sweatshirt and bitterly complained it had not been his plan to rob the workers in the first place: "It was someone else's plan, man. . . . The plan went bad."

2. *The Trial Proceedings*

The amended information charged both Christian Martinez and Carlos Martinez with one count of murder (Pen. Code, § 187, subd. (a))[6] (count 1), two counts of first degree residential robbery (§ 211) (counts 2 (Barboza) and 7 (Castillo));[7] one count of first degree burglary (§ 459) and conspiracy to commit a crime (§ 182, subd. (a)(1)).[8] Carlos Martinez was also charged with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)). The information further alleged as a special circumstance that the murder had been committed during the commission of a robbery and a burglary (§ 190.2, subd. (a)(17)); that Carlos Martinez personally and intentionally discharged a firearm that proximately caused Castillo's death (§ 12022.53, subd. (d)); that a principal was armed with a firearm in the commission of the murder, the robberies and the burglary (§ 12022, subd. (a)(i)); and that Carlos Martinez had suffered one prior serious or violent felony conviction within the meaning of the "Three Strikes" law (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)).[9]

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[6] Statutory references are to the Penal Code unless otherwise indicated.

[7] The second robbery count was based on an allegation Carlos Martinez took Castillo's keys with him when he fled the room. The keys were never recovered.

[8] The conspiracy count was stricken at the beginning of the trial.

[9] Santisteven was also charged with murder and robbery in the amended information.

In preliminary motions the court rejected Carlos Martinez's motion to exclude his statement under *Miranda, supra*, 384 U.S. 436. The court also denied Christian Martinez's motion to exclude evidence of prior acts of misconduct under Evidence Code section 1101, subdivision (b). During jury selection, after the prosecutor used her 11th peremptory challenge to exclude a fourth African-American potential juror, Carlos Martinez's counsel objected to the challenges as racially biased. The court denied the defense's *Wheeler* motion[10] for lack of prima facie evidence of discrimination but allowed the prosecutor to state the reasons for her challenges on the record. After she did so, the court restated its denial of the motion for lack of prima facie evidence of discrimination.

Neither Christian nor Carlos Martinez testified at trial. The jury convicted Christian Martinez of first degree murder and two counts of first degree robbery. Carlos Martinez was convicted of first degree murder, two counts of first degree robbery and possession of a usable quantity of methamphetamine. The jury also found true the special circumstance allegation the murder was committed in the course of a robbery and burglary and the firearm-use allegations. Finally, the court found true the allegation Carlos Martinez had suffered a prior serious or violent felony conviction.

Carlos Martinez was sentenced on count 1 (first degree murder with special circumstances) to life imprisonment without the possibility of parole plus 25 years to life for the firearm-use enhancement (§ 12022.53, subd. (d)). The remaining firearm enhancement was stayed. On count 7 (robbery-Barboza) he was sentenced to a term of eight years (the middle term of four years doubled pursuant to the Three Strikes law) plus 25 years to life for the firearm-use enhancement. On count 4 (possession of a controlled substance) he received a state prison sentence of 16 months (one third the middle term of two years doubled pursuant to the Three Strikes law). The sentence on count 2 (robbery-Castillo) was stayed pursuant to section 654.

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[10] *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

Christian Martinez was sentenced on count 1 to life imprisonment without the possibility of parole plus one year for the armed-principal enhancement (§ 12022, subd. (a)(1)). On count 7 she was sentenced to a term of 16 months (one-third the middle term of four years) plus one year for the armed-principal enhancement.[11] The sentence on count 2 was stayed pursuant to section 654.[12]

CONTENTIONS

Carlos Martinez contends the trial court improperly denied his *Wheeler* motion based on the prosecutor's discriminatory exercise of peremptory challenges during jury selection and erred in admitting his videotaped interview, which he argues was obtained in violation of his Sixth Amendment right to counsel and *Miranda, supra*, 384 U.S. 436.

Christian Martinez contends the court abused its discretion under Evidence Code section 1101 and violated her due process rights in admitting evidence of a prior act of misconduct. She also contends the court erred in admitting the videotaped hearsay statements of Carlos Martinez and argues the statements, even if redacted, violated her constitutional right to confront witnesses. Further, she contends there was insufficient evidence to support her conviction and her trial counsel was ineffective for failing to

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[11] It appears the court incorrectly calculated the sentence on this count, the only determinate sentence actually imposed, as if it were a subordinate term rather than the principal term. (Cal. Rules of Court, rule 4.451(a); see § 1170.1, subd. (a).) No objection was made in the trial court, however; and the People do not contend on appeal that the court imposed an unauthorized sentence. (See generally *People v. Smith* (2001) 24 Cal.4th 849, 854.)

[12] Rather than a one-year armed-principal enhancement on count 1 and a second one-year armed-principal enhancement on count 7, as actually imposed by the court at the sentencing hearing, the minute order entered after the sentencing hearing and the abstract of judgment fail to include any armed-principal enhancement on count 1 and improperly reflect a two-year armed-principal enhancement on count 7. We order the correction of these clerical errors. (See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [record of court's oral pronouncement controls over clerk's minute order]; *People v. Mitchell* (2001) 26 Cal.4th 181, 186-187 [appellate court may correct clerical errors on its own motion or upon application of the parties]; see also *People v. Garcia* (2008) 162 Cal.App.4th 18, 24, fn. 1.)

object and request a limiting instruction on the jury's use of Carlos Martinez's statements.

DISCUSSION

1. *The Trial Court Did Not Err in Rejecting the Claim of Racially Biased Jury Selection*

   a. *Governing law*

The exercise of peremptory challenges to remove prospective jurors on the sole ground of group bias violates both the California and the United States Constitutions. (*People v. Ward* (2005) 36 Cal.4th 186, 200, citing *Wheeler, supra,* 22 Cal.3d at pp. 276-277 and *Batson v. Kentucky* (1986) 476 U.S. 79, 89 [106 S.Ct. 1712, 90 L.Ed.2d 69] (*Batson*).) The procedure and substantive standards trial courts properly use when considering motions challenging peremptory strikes are now well-established: """"First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race[; s]econd, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question[; and t]hird, in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination""" (*People v. Hamilton* (2009) 45 Cal.4th 863, 898, quoting *Snyder v. Louisiana* (2008) 552 U.S. 472, 476-477 [128 S.Ct. 1203, 1207, 170 L.Ed.2d 175, 181] (*Snyder*).)

"[A] defendant satisfies the requirements of *Batson's* first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." (*Johnson v. California* (2005) 545 U.S. 162, 170 [125 S.Ct. 2410, 162 L.Ed.2d 129]; accord *People v. Hawthorne* (2009) 46 Cal.4th 67, 79.) "An inference is a logical conclusion based on a set of facts. [Citation.] When the trial court concludes that a defendant has failed to make a prima facie case, we review the voir dire of the challenged jurors to determine whether the totality of the relevant facts supports an inference of discrimination." (*People v. Lancaster* (2007) 41 Cal.4th 50, 74, citing *Johnson,* at p. 168 & fn. 4.)

As always, "'[w]e review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges "'with great restraint.'" [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.'" (*People v. Lenix* (2008) 44 Cal.4th 602, 613-614 (*Lenix*).) If the record """"suggests grounds upon which the prosecutor might reasonably have challenged" the jurors in question, we affirm.'"""" (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 501; see *People v. Bonilla* (2007) 41 Cal.4th 313, 341 ["we review the trial court's denial of a *Wheeler/Batson* motion deferentially, considering only whether substantial evidence supports its conclusions"] (*Bonilla*).) "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." (*Snyder, supra*, 552 U.S. at p. 479 [128 S.Ct. at p. 1207].)[13]

b. *The trial court's denial of the motion was not clearly erroneous*

Although "exclusion by peremptory challenge of a single juror on the basis of race or ethnicity is an error of constitutional magnitude requiring reversal" (*People v. Silva* (2001) 25 Cal.4th 345, 386), a *Wheeler* inquiry often focuses on situations in which "a discriminatory pattern begins to emerge." (*People v. Motton* (1985) 39 Cal.3d 596, 604; see *Bonilla, supra*, 41 Cal.4th at p. 343, fn. 12 ["'in drawing an inference of discrimination from the fact one party has excused "most or all" members of a cognizable group' . . . 'a court finding a prima facie case is necessarily relying on an apparent pattern in the party's challenges'"].)

Carlos Martinez contends a discriminatory pattern was demonstrated here because four of the prosecutor's 11 peremptories (as of the time the motion was made) had targeted African-American jurors. According to Carlos Martinez, the prosecutor "used

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[13] The California Supreme Court has held that the "substantial evidence" standard for review of pure issues of fact is equivalent to the federal "clearly erroneous" standard. (See *People v. Hamilton, supra*, 45 Cal.4th at p. 901, fn. 11.)

36 [percent] of her challenges against Black jurors, who made up only 17 [percent] of the prospective jurors. In addition, she challenged 66 [percent] of all Black jurors, but only 23 [percent] of all non-Black jurors." This, he claims, raises an inference of discrimination sufficient to state a prima facie case and supports an ultimate finding of discrimination as well.

The Supreme Court has cautioned under similar circumstances, however, "'the small absolute size of this sample makes drawing an inference of discrimination from this fact alone impossible.'" (*Bonilla, supra,* 41 Cal.4th at p. 343.) In *Bonilla* the prosecutor struck the only two African Americans in the juror pool, but the Court declined to conclude those two strikes gave rise to "a *pattern* of impermissible exclusion." (*Ibid.*) Here, the prosecutor used four of her first 11 challenges to strike four of the first six African-American jurors (another was struck by Carlos Martinez's codefendant). The prospective juror most recently struck by the prosecutor was replaced by another African-American juror, leaving two African-American jurors in the jury box at the time the court ruled on the challenge. Because we have been given no information on how many African-American jurors remained in the venire—the trial court observed there were "additional African Americans in the pool"—it is difficult to assess the significance of the pattern Carlos Martinez alleges.[14] (See *People v. Neuman* (2009) 176 Cal.App.4th 571, 582 ["defendant's assertion that the prosecutor exercised 75 percent of his peremptories against members of a cognizable class freezes the record at the time of the motion, ignores everything that happened thereafter (which cannot now be reconstructed, thanks to defendant's failure to make a record below) and flies in the face of the rule that we examine the *entire* record"]; *People v. Avila* (2006) 38 Cal.4th 491, 555 [fact that several African-American prospective jurors were in the venire at the time the only African American in the jury box was peremptorily excused by the prosecutor supports

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[14] Carlos Martinez concedes his statistics exclude challenges to prospective jurors after his motion was denied.

the trial court's finding of no prima facie case.].) These are facts the trial judge unquestionably assessed as he surveyed the courtroom.

Thus, while statistics certainly play a role, the trial court is permitted to consider a much wider range of factors, not only by drawing upon its contemporaneous observations of the venire and voir dire, but also by considering the prosecutor's demeanor, how reasonable or improbable the reasons are and whether they have some basis in trial strategy, the court's own experiences as a lawyer and bench officer, and "even the common practices of the advocate and the office who employs him or her."[15] (*Lenix, supra,* 44 Cal.4th at p. 613; see *People v. Howard* (2008) 42 Cal.4th 1000, 1017-1019; *People v. Hoyos* (2007) 41 Cal.4th 872, 901-902; *Bonilla, supra,* 41 Cal.4th at p. 343.) When a trial court has based its decision, as this court did, on a much wider array of factors, it is insufficient on review for a defendant to rely solely on the racial pattern of peremptory challenges in making a prima facie case.[16] (E.g., *Hoyos,* at p. 901 [fact that

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[15] Carlos Martinez, whose Hispanic surname leads us to assume he is Hispanic (just as the prosecutor's surname leads us to speculate that she, too, is Hispanic), does not claim to be a member of the targeted group. As the Supreme Court has recognized, a discriminatory motive is more easily inferred if the defendant and the dismissed juror or jurors are from the same ethnic or racial group. (See, e.g., *Bonilla, supra,* 41 Cal.4th at p. 343 [noting defendant was not same race as challenged jurors]; *Wheeler, supra,* 22 Cal.3d at pp. 280-281.) The same is true if the victim of the crime is a member of the targeted group. (See *People v. Bell* (2007) 40 Cal.4th 582, 597.) Here, Castillo, like Carlos Martinez, was Hispanic, not African American.

[16] The trial court initially ruled there was no prima facie evidence of discrimination, explaining, "I see additional African Americans in the panel. I do not see a systemic—she has challenged 11 jurors and they have been across the board, so I don't find a prima facie case based on the fact that there are African-American jurors existing on the panel, existing on the present jury." After giving the prosecutor the opportunity to indicate her reasons for excluding the last prospective juror "to protect the record," the court reiterated its finding of no prima facie case: "The Court has listened to the challenge by the defense. Their only grounds for a challenge are that these jurors were members of a cognizable group and no other relevant factors. The Court has looked at the remaining jurors, the number of African-American jurors presently on the jury, the fact that the juror that has just been excused was replaced with an African-American juror, the fact that the jurors that have been excused were both female and male, and the reasons for the excusal

prosecutor excused all members of a particular group "alone is not conclusive"]; *People v. Kelly* (2007) 42 Cal.4th 763, 780 [prima facie case weakened where prosecutor left some members of minority group on jury].)

Carlos Martinez next contends third-stage review of the prosecutor's stated grounds for her peremptories is required because the trial court failed to make factual findings on the legitimacy of the prosecutor's proffered rationale.[17] Third-stage review is not the consequence of the court's failure to comment on the credibility of a prosecution's rationale. "When the trial court expressly states that it does not believe a prima facie case has been made, and then invites the prosecution to justify its challenges for the record on appeal, the question whether a prima facie case has been made is not mooted, nor is a finding of a prima facie showing implied." (*People v. Howard, supra,* 42 Cal.4th at p. 1018; see *People v. Hawthorne, supra,* 46 Cal.4th at p. 79, fn. 2; cf. *Lenix, supra,* 44 Cal.4th at p. 613, fn. 8 ["third stage" case].) "[I]t is the better practice for the trial court to have the prosecution put on the record its race-neutral explanation for any contested peremptory challenge, even when the trial court may ultimately conclude no prima facie case has been made out. This may assist the trial court in evaluating the challenge and will certainly assist reviewing courts in fairly assessing whether any constitutional violation has been established." (*Bonilla, supra,* 41 Cal.4th at p. 343, fn. 13; see *People v Adanandus, supra,* 157 Cal.App.4th at pp. 500-501.)

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by the prosecution of these jurors was race neutral even though I'm not finding a prima facie case. Having heard all of that, the challenge is denied."

[17] Asked to indicate her reasons for exercising her peremptory challenges "to protect the record," the prosecutor explained she excused prospective juror 8617 because she would not make eye contact and looked away when the prosecutor was speaking to her; prospective juror 2668 because she looked frustrated and angry and was not forthcoming in answering questions; prospective juror 3121 because he seemed to nod his head in agreement when another prospective juror told a story suggesting police officers had tried to plant a gun in his car; and prospective juror 1274 because she had testified as a defense witness for a co-worker she believed had been wrongly accused of misconduct and because she had been a juror in a prior criminal trial that resulted in a mistrial and had been upset during that trial by the racial views of other jurors.

In this instance, after the prosecutor had completed her statement of reasons, the court repeated its earlier determination the defense had failed to establish a prima facie case of racial discrimination. Rather than leaving gaps in the record, the trial court simply ensured, based on its assessment of the relevant circumstances, no third-stage review of the prosecutor's challenges would be required. (See *Lenix, supra*, 44 Cal.4th at p. 613, fn. 8 [where "the trial court request[s] the prosecutor's reasons for the peremptory challenges and rule[s] on the ultimate question of intentional discrimination . . . the question of whether defendant established a prima facie case is moot"]; accord, *Hernandez v. New York* (1991) 500 U.S. 352, 359 [111 S.Ct. 1859, 114 L.Ed.2d 395].)

Carlos Martinez argues the result mandated by the well-established case law discussed in the preceding paragraphs is inconsistent with the recent decision of the United States Supreme Court in *Snyder, supra*, 552 U.S. 472, which reversed a murder conviction and death sentence because the prosecutor had exercised a racially motivated peremptory challenge. In *Snyder* the prosecutor used five of his 12 peremptories to eliminate all African-American jurors from the panel of 36 prospective jurors. (*Id.* at p. 476.) In a third-stage review of the prosecutor's reasons for challenging one particular prospective juror (his apparent nervousness and time constraints), the Court held the trial court's failure to state whether it shared the prosecutor's perception made it impossible to review the individual's nervousness as a proposed justification. (*Id*. at p. 479.) Because the alleged time-constraint justification did not differ from the circumstances of non-African-American jurors who were not excused, the Court described that justification as "highly speculative," "suspicious" and "implausible." (*Id*. at pp. 482-483.) Considering these factors in tandem, the Court concluded the prosecutor's justification was pretextual and masked a discriminatory intent. (*Id*. at p. 485.)

Relying on *Snyder*, Martinez claims deference to the trial court is inappropriate whenever the court fails to make factual findings in support of a prosecutor's subjective grounds for striking a potential juror. *Snyder* is more nuanced than Martinez's argument suggests. (See *Thaler v. Haynes* (2010) 559 U.S. ___ [2010 U.S. Lexis 1037] [reversing Fifth Circuit decision holding a demeanor-based explanation must be rejected if judge did

not observe or recall juror's demeanor].) *Snyder*, moreover, is distinguishable from this case in which we review asserted first-stage *Wheeler* error. Having allowed the prosecutor to state her reasons on the record, the trial court reaffirmed its finding of no prima facie case and was not required to engage in a third-stage analysis or make findings related to the credibility of the prosecutor's assertions.[18] (See *People v. Hamilton*, *supra*, 45 Cal.4th at p. 907, quoting *Miller-El v. Cockrell* (2003) 537 U.S. 322, 339 [123 S.Ct. 1029, 154 L.Ed.2d 931] ["[a]t the third stage of the *Batson/Wheeler* inquiry, '"the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible"'"]; see also *People v. Bramit* (2009) 46 Cal.4th 1221, 1236, fn. 7 [rejecting contention *Snyder* permits deference only when trial court makes an express determination of credibility].) A reviewing court need not engage in comparative juror analysis when, as here, the trial court has denied the defendant's *Wheeler* motion after concluding the defendant failed to establish a prima facie case. (*People v. Hawthorne, supra,* 46 Cal.4th at p. 80, fn. 3 [declining to subject prosecutor's use of peremptory challenges to comparative juror analysis in a "'first-stage' *Wheeler/Batson* case"]; accord, *People v. Howard, supra,* 42 Cal.4th at pp. 1019-1020.) We have reviewed the

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[18] Carlos Martinez's suggestion a prosecutor's subjective reasons for challenging a juror are inadequate to support a contested peremptory challenge after *Snyder* ignores longstanding federal and state law. In case after case, courts have affirmed the necessarily subjective nature of jury selection. (See, e.g., *Snyder, supra*, 552 U.S. at p. ___ ["race-neutral reasons for peremptory challenges often invoke a juror's demeanor (e.g., nervousness, inattention), making the trial court's first-hand observations of even greater importance"]; *People v. Hamilton, supra*, 45 Cal.4th at p. 935 [peremptory challenges "may be made on an 'apparently trivial' or 'highly speculative' basis"]; *People v. Watson* (2008) 43 Cal.4th 652, 670 ["'[j]urors may be excused based on "hunches" and even "arbitrary" exclusion is permissible, so long as the reasons are not based on impermissible group bias'"]; *Lenix, supra,* 44 Cal.4th at p. 613 ["prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons"]; *People v. Lancaster* (2007) 41 Cal.4th 50, 76 ["[a] tendency toward equivocation" may be legitimately found objectionable by a prosecutor]; *People v. Johnson* (1989) 47 Cal.3d 1194, 1219 [trivial reasons such as "body language" and "mode of answering questions" legitimate grounds "so long as asserted in good faith"].)

prosecutor's stated rationale for her use of peremptory challenges to the prospective African-American jurors and see no indication the trial court failed to undertake the requisite sincere, neutral and reasoned evaluation of the circumstances before it. (See *People v. Reynoso* (2003) 31 Cal.4th 903, 919; *Lenix*, *supra*, 44 Cal.4th at pp. 613-614.) Accordingly, we affirm the court's denial of Martinez's *Wheeler/Batson* motion.

2. *The Trial Court's Admission of Carlos Martinez's Videotaped Statement Was Not Error With Respect to Either Defendant*

a. *Carlos Martinez's statement was not obtained in violation of his right to counsel*

Miranda admonitions (advising a suspect of his or her right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel) must be given and an individual in custody must knowingly and intelligently waive those rights before being subjected to either express questioning or its "functional equivalent." (*Rhode Island v. Innis* (1980) 446 U.S. 291, 300-301 [100 S.Ct. 1682, 64 L.Ed.2d 297]; accord, *People v. Ray* (1996) 13 Cal.4th 313, 336.) Carlos Martinez does not challenge the initial advisement or his waiver of *Miranda* rights at the commencement of his interrogation by Detectives Bourgeous and Walton but contends his right to counsel was violated when, midway through his interrogation, he stated, "I think I need a lawyer." According to Carlos Martinez, his request for counsel was neither ambiguous nor equivocal; and the interrogation should have ceased immediately.

"'"'"If a suspect indicates "in any manner and, at any stage of the process," prior to or during questioning, that he or she wishes to consult with an attorney, the defendant may not be interrogated.'"'" [Citation.] Rather, '"the interrogation must cease until an attorney is present."' [Citation.] Moreover if, in violation of this rule, interrogation continues of an in-custody suspect who has asked for but has not been provided with counsel, the suspect's responses are presumptively involuntary and therefore 'are inadmissible as substantive evidence at trial.'" (*People v. Sapp* (2003) 31 Cal.4th 240, 266; see *People v. Gonzalez* (2005) 34 Cal.4th 1111, 1122 ["once a suspect has asserted his or her right to counsel during custodial interrogation, the interrogation must cease"].)

The interrogation may resume after a suspect has indicated he or she wishes to have an attorney only if an attorney is present or "the accused himself initiates further communication, exchanges, or conversations with the police." (*Edwards v. Arizona* (1981) 451 U.S. 477, 484-485 [101 S.Ct. 1880, 68 L.Ed.2d 378].) To fall within this latter exception, the suspect must make more than "a necessary inquiry arising out of the incidents of the custodial relationship" (*Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1046 [103 S.Ct. 2830, 77 L.Ed.2d 405]); he or she must indicate "a desire for a generalized discussion about the investigation." (*Ibid*.)

The People have the burden of proving by a preponderance of the evidence that a defendant knowingly and voluntarily waived his *Miranda* rights. (*People v. Whitson* (1998) 17 Cal.4th 229, 248; see *Colorado v. Connelly* (1986) 479 U.S. 157 [107 S.Ct. 515, 93 L.Ed.2d 473]; *People v. Sims* (1993) 5 Cal.4th 405, 440.) A valid waiver may be express or implied. (*Whitson*, at p. 246.) Although it may not be inferred "simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained" (*Miranda*, *supra*, 384 U.S. at p. 475), a waiver may properly be inferred when "the actions and words of the person interrogated" clearly imply it. (*North Carolina v. Butler* (1979) 441 U.S. 369, 373 [99 S.Ct. 1755, 1757, 60 L.Ed.2d 286].) In assessing an *Edwards* claim, "we inquire into whether, under the totality of the circumstances, there was 'the requisite coercive activity by the state or its agents and the necessary causal connection between any such activity and the statements in question.'" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 643.)

We agree with Carlos Martinez he invoked his right to have counsel present during further questioning when he stated, "I think I need a lawyer." (Compare *Davis v. United States* (1994) 512 U.S. 452, 455 [114 S.Ct. 2350, 129 L.Ed.2d 362] [contrasting this statement with equivocal assertion, "Maybe I should talk to a lawyer"] with *Burket v. Angelone* (4th Cir. 2000) 208 F.3d 172, 198 ["I think I need a lawyer" held to be

equivocal under circumstances of that case].) Nonetheless, we find no error in the trial court's decision to admit the statements.[19]

Faced with the detectives' prompt termination of the interrogation "unless you want to change your mind," Carlos Martinez did exactly that. He equivocated and asked if he could have a lawyer "later on." When the detectives explained, "Once you say you want a lawyer we're not gonna ask any more questions, we're gonna take you right back down to your cell"—a near perfect recitation of their constitutional duty—followed by the conditional offer, "unless you say, 'I changed my mind. I don't want a lawyer,'" Carlos Martinez promptly responded, "I changed my mind, Sir." Once the detectives confirmed his position, Carlos Martinez himself renewed the discussion, eager to explain he did not know "how all the blood got on me." (See *People v. San Nicolas*, *supra*, 34 Cal.4th at p. 642 ["'[a]n accused "initiates"' further communication, exchanges, or conversations of the requisite nature 'when he speaks words or engages in conduct that can be "fairly said to represent a desire" on his part "to open up a more generalized discussion relating directly or indirectly to the investigation"'"].)

If anything, this is a textbook example of how law enforcement officers should conduct interviews. The purpose of a prophylactic rule like *Miranda* is to ensure officers follow the law; it is emphatically not the purpose to deprive officers of legitimate tools to do their jobs. (See *People v. Holloway* (2004) 33 Cal.4th 96, 115 ["'[M]ere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary. . . . "[W]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct," the subsequent statement will not be considered involuntarily made.'"].) There was no badgering or

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[19] On appeal we accept the trial court's resolution of disputed facts and inferences and its evaluation of credibility if supported by substantial evidence. (*People v. Whitson, supra,* 17 Cal.4th at p. 248; *People v. Cortes* (1999) 71 Cal.App.4th 62, 69-70.) We independently determine whether, from the undisputed facts and those properly found by the trial court, the challenged statements were illegally obtained. (*Whitson*, at p. 248; *People v. Samayoa* (1997) 15 Cal.4th 795, 829.)

deception here. (See, e.g., *Michigan v. Harvey* (1990) 494 U.S. 344, 350 [110 S.Ct. 1176, 108 L.Ed.2d 293] ["*Edwards* thus established another prophylactic rule designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights"]; *Miranda, supra,* 384 U.S. at p. 476 ["any evidence that the accused was threatened, tricked, or cajoled into a waiver will . . . show that the defendant did not voluntarily waive his privilege"].) Nor was Martinez an inexperienced youth unfamiliar with the consequences of his actions. (See, e.g., *People v. Lewis* (2001) 26 Cal.4th 334, 384 [relevant factors to consider include age, intelligence, education, experience and capacity to understand; 14-year-old defendant's waiver of *Miranda* rights found voluntary, knowing and intelligent].)

b. *Admission of the statement did not violate Christian Martinez's right to confront witnesses*

In all criminal prosecutions the accused has a right guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution "to be confronted with the witnesses against him." (U.S. Const., 6th Amend.; see *Pointer v. Texas* (1965) 380 U.S. 400 [85 S.Ct. 1065, 13 L.Ed.2d 923] [applying Sixth Amendment to the states].) "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." (*Maryland v. Craig* (1990) 497 U.S. 836, 845 [110 S.Ct. 3157, 111 L.Ed.2d 666]; accord, *People v. Fletcher* (1996) 13 Cal.4th 451, 455 (*Fletcher*).)

"A recurring problem in the application of the right of confrontation concerns an out-of-court confession of one defendant that incriminates not only that defendant but another defendant jointly charged. Generally, the confession will be admissible in evidence against the defendant who made it (the declarant). (See Evid. Code, § 1220 [hearsay exception for party admission].) But, unless the declarant submits to cross-examination by the other defendant (the nondeclarant), admission of the confession against the nondeclarant is generally barred both by the hearsay rule (Evid. Code, § 1200)

and by the confrontation clause (U.S. Const., 6th Amend.)." (*Fletcher, supra,* 13 Cal.4th at p. 455, fn. omitted.)

The trial court in this case instructed the jury that Carlos Martinez's statements were not to be considered in deciding the charges against Christian Martinez. That limiting instruction, however, does not resolve Christian Martinez's confrontation clause claim.

In *Bruton v. United States* (1968) 391 U.S. 123 [88 S.Ct. 1620, 20 L.Ed.2d 476] (*Bruton*) the United States Supreme Court held a codefendant's extrajudicial confession so incriminated a jointly tried defendant that its introduction into evidence insulated from cross-examination violated the nondeclarant defendant's Sixth Amendment right to confront witnesses against him. Codefendants Evans and Bruton were tried jointly and convicted of armed postal robbery. A postal inspector testified Evans confessed he and Bruton had committed the crime. The trial court instructed the jury Evans's confession was admissible against him but could not be considered in assessing Bruton's guilt. The Supreme Court held introduction of Evans's confession posed such a serious threat to Bruton's right to confront and cross-examine witnesses against him he was entitled to a new trial.

The Court explained, "[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. [Citations.] Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect . . . . The unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination." (*Bruton, supra,* 391 U.S. at pp. 135-136.)

The *Bruton* Court cited with approval the California Supreme Court's decision in *People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*), which had reached a similar result

three years earlier on state law grounds.[20] In *Aranda* codefendant Martinez had confessed to police he and Aranda had committed a robbery. (*Id.* at p. 522.) Although the trial court instructed the jury the confession was admitted only against Martinez, the Supreme Court held the jury could not "perform the overwhelming task of considering it in determining the guilt or innocence of the declarant and then of ignoring it in determining the guilt or innocence of any codefendants of the declarant. . . . [The jury] cannot determine that a confession is true insofar as it admits that A has committed criminal acts with B and at the same time effectively ignore the inevitable conclusion that B has committed those same criminal acts with A." (*Id*. at p. 529.)

The *Aranda* Court declared, in all cases in which the prosecution proposes to introduce into evidence an extrajudicial statement of one defendant that implicates a jointly tried defendant, the trial court must consider and implement one of three options: effectively redact the statement to eliminate any reference to the nontestifying codefendant; sever the defendants and conduct separate trials (or use separate juries); or exclude the statement as to both defendants. (*Aranda*, *supra*, 63 Cal.2d at pp. 530-531.) As to the first option, the trial court may permit a joint trial "if all parts of the extrajudicial statements implicating any codefendants can be and are effectively deleted without prejudice to the declarant. By effective deletions, we mean not only direct and indirect identifications of codefendants but any statements that could be employed against nondeclarant codefendants once their identity is otherwise established." (*Id*. at p. 530.) "[E]diting a nontestifying codefendant's extrajudicial statement to substitute pronouns or similar neutral terms for the defendant's name will not invariably be sufficient to avoid violation of the defendant's Sixth Amendment confrontation rights. Rather, the sufficiency of this form of editing must be determined on a case-by-case basis in light of the statement as a whole and the other evidence presented at the trial.

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[20] To the extent *Aranda* may have mandated exclusion of evidence that need not be excluded under *Bruton* and its progeny, "it was abrogated in 1982 by the 'truth-in-evidence' provision of Proposition 8 (Cal. Const., art. I, § 28, subd. (d))." (*Fletcher, supra,* 13 Cal.4th at p. 465, fn. omitted.)

[Citation.] The editing will be deemed insufficient to avoid a confrontation violation if, despite the editing, reasonable jurors could not avoid drawing the inference that the defendant was the coparticipant designated in the confession by symbol or neutral pronoun." (*Fletcher, supra,* 13 Cal.4th at p. 456; see also *Gray v. Maryland* (1998) 523 U.S. 185, 192 [118 S.Ct. 1151, 140 L.Ed.2d 194] ["[r]edactions that simply replace a name with an obvious blank space or a word such as 'deleted' or a symbol or other similarly obvious indications of alteration, however, leave statements that, considered as a class, so closely resemble *Bruton's* unredacted statements that, in our view, the law must require the same result"].)[21]

We have reviewed the redacted videotape and transcript of Carlos Martinez's interrogation. Christian Martinez's name has been removed from both; the only unnamed, unidentified references to other individuals in Carlos Martinez's statements that relate to Christian Martinez indicate that he lent money to a friend who needed money; later accompanied a group of friends to hang out at the motel; and, after the shooting, got into the car with his friends and left the motel. Those facts were established

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[21] Use of a codefendant's redacted confession was upheld in *Richardson v. Marsh* (1987) 481 U.S. 200 [107 S.Ct. 1702, 95 L.Ed.2d 176]. The confession omitted any reference to the codefendant and suggested only the declarant and a third party, who was not the codefendant, had been involved in the crime. (*Id*. at p. 203.) The Supreme Court held with this type of extrajudicial statement the societal benefits of joint trials outweigh the potential risk of prejudice to a defendant, provided the trial court reads the jury a proper limiting instruction:

"The rule that juries are presumed to follow their instructions is a pragmatic one, rooted less in the absolute certitude that the presumption is true than in the belief that it represents a reasonable practical accommodation of the interests of the state and the defendant in the criminal justice process. On the precise facts of *Bruton*, involving a facially incriminating confession, we found that accommodation inadequate. As our discussion above shows, the calculus changes when confessions that do not name the defendant are at issue. While we continue to apply *Bruton* where we have found that its rationale validly applies, [citation], we decline to extend it further. We hold that the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." (*Richardson v. Marsh, supra,* 481 U.S. at p. 211.)

by other evidence at trial and are not inherently incriminating. Indeed, nothing in the statements made by Carlos Martinez to Detectives Bourgeous and Walton suggest any criminal activity by Christian Martinez. Accordingly, the use of the videotaped interrogation did not constitute *Aranda/Bruton* error in violation of Christian Martinez's right of confrontation.[22]

3. *The Trial Court Did Not Abuse Its Discretion in Admitting Evidence of Christian Martinez's Prior Misconduct*

California law has long precluded use of evidence of a person's character (a predisposition or propensity to engage in a particular type of behavior) as a basis for an inference that he or she acted in conformity with that character on a particular occasion. Evidence Code section 1101, subdivision (a), "prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393 (*Ewoldt*).)[23]

Evidence Code section 1101, subdivision (b), clarifies, however, that this rule "does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*Ewoldt, supra,* 7 Cal.4th at p. 393, see *People v. Falsetta* (1999) 21 Cal.4th 903, 914 [historically "the rule against admitting evidence of the defendant's other bad acts to prove his present conduct was subject to far-ranging exceptions"].) "'[E]vidence of uncharged crimes is admissible to prove, among other things, the identity of the perpetrator of the charged

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[22] Christian Martinez's argument her defense counsel provided ineffective assistance in failing to request a limiting instruction is based on an apparent misreading of the record and plainly lacks merit. In light of the limiting instruction given by the court and the redaction of Carlos Martinez's statement to eliminate any reference, direct or indirect, to Christian Martinez as discussed in the text, her claim the statement was inadmissible hearsay as to her also lacks merit.

[23] Evidence Code section 1101, subdivision (a), provides, "Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion."

crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes . . . only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity, common design or plan, or intent . . . .'" (*People v. Carter* (2005) 36 Cal.4th 1114, 1147.)[24] "As Evidence Code section 1101, subdivision (b) recognizes, that a defendant previously committed a similar crime can be circumstantial evidence tending to prove his identity, intent, and motive in the present crime. Like other circumstantial evidence, admissibility depends on the materiality of the fact sought to be proved, the tendency of the prior crime to prove the material fact, and the existence *vel non* of some other rule requiring exclusion." (*People v. Roldan* (2005) 35 Cal.4th 646, 705 disapproved on another point by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; see also *People v. Walker* (2006) 139 Cal.App.4th 782, 796; Simons, Cal. Evid. Manual (2008) § 6.10, p. 449.)

The trial court allowed a police detective to testify Christian Martinez had admitted to him on April 27, 2003 (about six months before the murder at the Motel 6) that she had been driving some friends who decided to commit a robbery to obtain money to stay at a motel in El Monte. After several ineffective attempts, the group ultimately robbed a pedestrian of her purse. Christian Martinez pulled the car to the curb while one of her companions got out and yanked the woman's purse from her hand. The confederate then jumped back into the car, which sped away. Christian Martinez argues it was error to admit this testimony, claiming the evidence is insufficiently probative of her intent in the current case yet highly prejudicial. She also contends admission of the detective's statement violated the corpus delicti rule because there was no evidence a crime had ever been committed.

At trial the People introduced evidence Christian Martinez needed money; she was the driver and owner of the Cadillac; she spent the morning with a group of friends including Santisteven and Carlos Martinez; she checked in and out of the motel within an

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[24] The least degree of similarity between the uncharged act and the charged offense is required in order to prove intent. (*Ewoldt, supra,* 7 Cal.4th at p. 402.)

hour; she spent at least some time in room 117; she drove away with two of her companions; she returned to the motel to retrieve Santisteven and Carlos Martinez; and, after picking them up, she drove away so quickly the car leaned in the turn and its wheels screeched. Nonetheless, as the prosecutor explained to the trial court, the People lacked direct evidence that Christian Martinez knew Santisteven and Carlos Martinez planned to rob the construction workers. Her participation in the earlier robbery as, in effect, a getaway driver was probative of her willingness and intent to do so again at the Motel 6. Although the jury certainly could have inferred Christian Martinez's intent from the events at the motel, the evidence of her participation in the earlier robbery supported that conclusion and was neither irrelevant nor cumulative. Therefore, the trial court was required to decide whether the evidence was "outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury." (*People v. Kipp* (1998) 18 Cal.4th 349, 371; see *People v. Carter, supra,* 36 Cal.4th at p. 1149; Evid. Code, § 352.)

"On appeal, a trial court's ruling under Evidence Code sections 1101 and 352 is reviewed for abuse of discretion." (*People v. Lewis* (2001) 25 Cal.4th 610, 637.) We cannot say the trial court abused its discretion in admitting this evidence. The prejudice to Martinez resulted not from some policy concern or danger that the admission could be misconstrued; to the contrary, the prejudice resulted from its extraordinary persuasiveness. (See, e.g., *People v. Karis* (1988) 46 Cal.3d 612, 638 ["The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues . . . .'"].)

We also reject the contention admission of Martinez's statements violated the corpus delicti rule. That rule requires the prosecution to "prove the corpus delicti, or the

body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168.) "The purpose of the corpus delicti rule is to satisfy the policy of the law that 'one will not be falsely convicted, by his or her untested words alone, of a crime that never happened.'" (*People v. Miranda* (2008) 161 Cal.App.4th 98, 107.) Although the Supreme Court has yet to address specifically whether the corpus delicti rule applies to evidence admissible under Evidence Code section 1101, subdivision (b) (see *People v. Horning* (2004) 34 Cal.4th 871, 899; *People v. Clark* (1992) 3 Cal.4th 41, 124 ["[i]t is not clear that the corpus delicti rule applies to other crimes evidence"]), several Courts of Appeal have declined to apply the rule in this context. (See, e.g., *People v. Denis* (1990) 224 Cal.App.3d 563, 568-569 ["[B]oth Wigmore and McCormick question the need for the corpus delicti rule itself. . . . We are, therefore, unwilling to expand the rule to cover evidence of uncharged conduct, offered for a limited purpose under Evidence Code section 1101, subdivision (b)"]; *People v. Martinez* (1996) 51 Cal.App.4th 537, 543-545 [following *Denis*; corpus delicti rule inapplicable when prior uncharged offense statement of defendant introduced for impeachment]; *People v. Davis* (2008) 168 Cal.App.4th 617, 636 [surveying cases and agreeing with *Martinez* and *Denis*].) We similarly decline to apply the corpus delicti rule in the context of an admission of a prior uncharged offense offered under Evidence Code section 1101, subdivision (b), for the purpose of proving intent.

4. *Substantial Evidence Supports Christian Martinez's Conviction, and Her Claim of Cumulative Error Fails*

To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support

of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

As discussed, the People introduced sufficient evidence Christian Martinez was a knowing participant in the planned robbery of Nacho Barboza, a plan that went dreadfully wrong and resulted in the murder of Alberto Castillo. Her conviction for felony murder and robbery is amply supported in the record.[25]

DISPOSITION

The judgment as to Carlos Martinez is affirmed. The judgment as to Christian Martinez is modified to reflect the trial court's imposition of a one-year armed-principal enhancement pursuant to section 12022, subdivision (a)(1), on count 1 and a second one-year armed-principal enhancement pursuant to that section on count 7, rather than a two-year enhancement on count 7 only. As modified, the judgment is affirmed. The abstract of judgment is ordered corrected to reflect the proper sentences on counts 1 and 7. The trial court shall forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

WOODS, J. ZELON, J.

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[25] Having found no error, necessarily there was not cumulative error by the trial court that denied Christian Martinez a fair trial.